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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,685	10/05/2006	Rejean Plante	771/14562.8	2817
25545 7590 09/15/2009 GOUDREAU GAGE DUBUC 2000 MCGILL COLLEGE SUITE 2200 MONTREAL, QC H3A 3H3 CANADA			EXAMINER SMITH, MATTHEW J	
			ART UNIT 3635	PAPER NUMBER
			NOTIFICATION DATE 09/15/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

10/599,685

**Applicant(s)**

PLANTE, REJEAN

**Examiner**

Matthew J. Smith

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 and 32-43 is/are rejected.
- 7) ☒ Claim(s) 30 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 October 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date 24 Jan 07
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date: \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 118, Figure 1A; 57, Figure 1G.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 500, [0050].

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 10, 11, 13, 16-19, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Swann (7146771).

Swann discloses a flexible insulation sheet-like material arrangement comprising first and second flexible insulation sheets installed in a coplanar relationship, Fig. 4; the first and second insulation sheets having a thickness and an overlap joint between the first and second insulation sheets, Fig. 4 at 42; the overlap joint having a thickness substantially equal to or less than the thickness of the first and second sheets, Fig. 3; the first and second insulation sheets have overlapping portions of reduced thicknesses at the overlap joint, Fig. 4; the first and second insulation sheets have adjoining side portions of reduced thicknesses and a layer of insulation material 22 extends over both the adjoining side portions to form the overlap joint; the first and second insulation sheets have adjoining side portions of reduced thicknesses; each of the first and second insulation sheets includes a moisture barrier 24; the first and second insulation sheets are at least partly made of bituminous material (col. 2, line 61); the first and second insulation sheets are at least partly made of a sound insulation material, 22; each of the first and second insulation sheets has a cross-sectional profile of a Z-shape; a peel-off film 46 at least partly covers a surface of the first and second insulation sheets; each of the first and second insulation sheets has an adhesive surface 36, 42 covered by the

peel-of film 46; the adhesive surface provided on the adjoining side portions of the first and second insulation sheets only; and an upwardly facing depression formed in one of the first and second insulation sheets along one side of the overlap joint.

This reference also discloses a flexible insulation membrane comprising a strip of insulation material 20 unrolled on a support surface, the strip of insulation material 22 having longitudinal side edges of reduced thicknesses 36, 42 to cooperate with adjoining longitudinal side edges of similar flexible membranes in forming free-bump overlap joints at the junction of adjacent insulation membranes; each of the strip of insulation material includes a moisture barrier 24; the strip of insulation material is at least partly made of bituminous material (col. 2, line 61); the strip of insulation material has a cross-sectional profile of a Z-shape; the strip of insulation has a sticky surface covered by a removable film 40.

Claims 1, 15, 16, 21, 23-25, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Foster (5968630).

Foster discloses a flexible insulation sheet-like material arrangement comprising first and second flexible insulation sheets installed in a coplanar relationship, Fig. 3; the first and second insulation sheets having a thickness and an overlap joint between the first and second insulation sheets, Fig. 3 at 14; the overlap joint having a thickness substantially equal to or less than the thickness of the first and second sheets, Fig. 3; and the first and second insulation sheets are respectively securely mounted underneath first and second floor covering members 17 and each of the first and

second insulation sheets has an upwardly facing overlapping portion and a downwardly facing overlapping portion, the upwardly facing overlapping portion extending laterally outwardly from one side of the first and second floor covering members.

This reference also discloses a flexible insulation membrane comprising a strip of insulation material 12, unrolled on a support surface, having longitudinal side edges of reduced thicknesses, Fig. 3-at 14, to cooperate with adjoining longitudinal side edges of similar flexible membranes in forming free-bump overlap joints at the junction of adjacent insulation membranes; the strip of insulation material has a sticky surface 28, 29 covered by a removable film 30; the strip of insulation material pre-assembled underneath a floor covering member and one of the longitudinal side portions of reduced thickness projects laterally outwardly from the floor covering member.

The reference further discloses a moisture barrier underlayment installed on a subfloor to provide a substantially flat and level surface for receiving floor covering 17, comprising at least first and second strips of moisture barrier membranes (col. 10, line 30) laid down one next to the other in a coplanar relationship; the first and second strips having a thickness and an overlap joint between the first and second strips; the overlap joint having a thickness substantially equal to or less than strips' thickness and providing a free-bump transition between the first and second strips while preventing straight-through moisture infiltration from the sub floor to the floor covering, Fig.3-at 14; a layer of substantially rigid floor members 17 installed next to one another in a coplanar relationship atop of the moisture barrier membranes strips for receiving the floor

covering; and the first and second strips of moisture barrier membrane have adjoining side portions of reduced thicknesses.

Claims 41-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Fiechtl (6189279).

Fiechtl discloses, in Fig. 2, a moisture barrier corner capping member, at 34, installed at the junction of at least two walls and a floor of a room to cooperate with a moisture barrier underlayment, comprising a thin sheet-like impermeable body 20 pre-formed to generally match the corner to be sealed, the sheet-like impermeable body having a wall panel and a floor panel extending from the wall panel, the floor panel being placed in sealingly overlapping relationship with the moisture barrier underlayment and the wall panel includes at least first and second wall sections extending over respective walls extending from the room corner; the thin sheet-like impermeable body made of a thermally sealable film material; the moisture barrier protrusion capping member installed about a protrusion extending from a floor to cooperate with a moisture barrier underlayment laid on the floor; the moisture barrier protrusion capping member having a thin sheet-like impermeable body fitted over the protrusion; the thin-sheet like impermeable body having a wall portion and a floor portion extending from the wall portion; the wall portion extending over the protrusion while the floor portion offers an upwardly facing surface placed in sealingly overlapping relationship with the moisture barrier underlayment.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swann in view of Manahan (388700).

Swann discloses the invention substantially as claimed but not measuring indicia provided on a top surface of first and second insulation sheets.

Manahan shows a flexible insulation sheet-like material arrangement with measuring indicia c provided on a top surface of first and second insulation sheets.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to add indicia to the Swann material, as shown by Manahan, in order to line up the edges.

Claims 12 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swann in view of Fischer (1939004).

Swann discloses the invention substantially as claimed but not a flexible insulation sheet-like material arrangement wherein the adhesive surface is provided as a pattern of adhesive points distributed on at least one of a top and a bottom surface of the first and second insulation sheets.



Fischer reveals, in Fig. 25, a flexible insulation sheet-like material arrangement with an adhesive surface provided as a pattern of adhesive points 18 distributed on the bottom surface.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a pattern of adhesive points to the Swann material, as shown by Fischer, in order to provide dead air pockets (Fischer, page 4, lines 32-33).

Claims 26 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster in view of Paul (2872882).

Foster discloses the invention substantially as claimed but not rigid floor members spaced from one another to accommodate expansion and contraction movements of the floor covering with a spring.

Paul depicts spring means 18 provided between adjacent floor members to accommodate contraction and expansion movements.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a spring to accommodate movement, as described by Paul since it is well known.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Foster in view of Crooks (2008244).

Foster discloses the invention substantially as claimed but not floor members having softened bottom edges to prevent puncturing of the moisture barrier membranes.

Crooks describes floor members having softened bottom edges 12 to prevent an excessive amount of cement from being forced up into the groove.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to soften the Foster bottom edges, as described by Crooks, in order to allow the strips to ride over cement (Crooks, page 2, lines 1-11).

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Foster in view of Weyerhaeuser (2354725).

Foster discloses the invention substantially as claimed but not longitudinal grooves in the floor members to accommodate expansion and contraction movements.

Weyerhaeuser illustrates longitudinal grooves 12 in floor members to accommodate expansion and contraction movements.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to groove the Foster floor members to accommodate movement, as illustrated by Weyerhaeuser, since it is well known.

Claims 33-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiechtl in view of Foster.

Fiechtl discloses a floor arrangement installed over a subfloor 14, comprising flexible flooring members 15 to be laid one next to the other in a coplanar relationship over the subfloor; the flexible flooring members provided as finish floor covering installed on an underlayment; the finish floor covering includes rolls of vinyl floor

covering (col. 3, line 14); moisture barrier corner capping members providing a sealing joint to the moisture barrier membranes laid on the subfloor in order to seal room corners; each moisture barrier corner capping member being made of a thin sheet-like impermeable material and having a wall panel and a floor panel; the floor panel being overlap by at least one of the moisture barrier membranes; the moisture barrier corner capping members made of a thermally weldable material; a baseboard moisture barrier backing installed at the junction of a wall and a floor of a room; the baseboard moisture barrier backing having a thin sheet-like impermeable-body having a wall panel and a floor panel extending from the wall panel; the floor panel being in sealingly overlapping engagement with at least one of the moisture barrier membranes.

This reference does not disclose the flexible flooring members having a thickness  $W_1$ , and an overlap joint between each pair of adjacent flexible flooring members, the overlap joint having a thickness  $W_2$  substantially equal to or less than  $W_1$  and providing a free-bump transition between the flexible flooring members, the underlayment comprises at least first and second strips of moisture barrier membranes laid down one next to the other in a coplanar relationship, the first and second strips of moisture barrier membranes having a thickness  $W_3$ , and an overlap joint between the first and second strips of moisture barrier membranes, the overlap joint having a thickness  $W_4$  substantially equal to or less than  $W_3$  and providing a free-bump transition between the first and second strips of moisture barrier membranes while preventing straight-through moisture infiltration from the subfloor to the finish floor covering, the rolls of flexible

flooring members have adjoining side portions of reduced thicknesses and are provided as rolls of moisture barrier membranes.

Foster displays the flexible flooring members having a thickness and an overlap joint, Fig. 3-at 14, between each pair of adjacent flexible flooring members and having a thickness substantially equal to or less than the adjacent member and providing a free-bump transition between the flexible flooring members; the underlayment having first and second strips of moisture barrier membranes (col. 10, line 30) laid down one next to the other in a coplanar relationship; the first and second strips of moisture barrier membranes having a thickness and an overlap joint between the first and second strips of moisture barrier membranes; the overlap joint having a thickness substantially equal to or less than the overlap and providing a free-bump transition between the first and second strips of moisture barrier membranes while preventing straight-through moisture infiltration from the subfloor to the finish floor covering; and the rolls of flexible flooring members have adjoining side portions of reduced thicknesses and are provided as rolls of moisture barrier membranes.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to overlap the Fiechtl sheets, as displayed by Foster, in order to keep the strips from moving (Foster, col. 7, line 55).

***Allowable Subject Matter***

Claims 30 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chamberlain (3111787) divulges overlapping edges.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Smith whose telephone number is (571) 272-7034. The examiner can normally be reached on T-Th, 8-3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./  
Supervisory Patent Examiner, Art Unit 3635

/M. J. S./  
Examiner, Art Unit 3635  
6 July 2009